

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

THE UNITED STATES OF AMERICA

vs.

**CLAY H. ROJAS, WILLIAM "BILLY" BETTENCOURT,
and VIVIANA V. RODRIGUEZ**

SUPERSEDING INDICTMENT

COUNT ONE:

**18 U.S.C. § 1349 - Conspiracy to Commit
Honest Services Fraud**

COUNTS TWO - SIX:

**18 U.S.C. §§ 1343 and 1346 - Honest Services
Fraud, 18 U.S.C. § 2 - Aiding and Abetting**

COUNT SEVEN:

**18 U.S.C. § 1030(a)(2)(C) and (c)(2)(A) -
Unlawfully Obtaining Information from a
Protected Computer**

COUNT EIGHT:

**18 U.S.C. § 1030(a)(2)(C) and (c)(2)(B)(i) -
Unlawfully Obtaining Information from a
Protected Computer for Financial Gain**

COUNT NINE:

**18 U.S.C. § 1030(a)(2)(C) and (c)(2)(B)(i) -
Unlawfully Obtaining Information from a
Protected Computer for Financial Gain**

COUNT TEN:

**18 U.S.C. § 1030(a)(2)(C) and (c)(2)(B)(i) -
Unlawfully Obtaining Information from a
Protected Computer for Financial Gain**

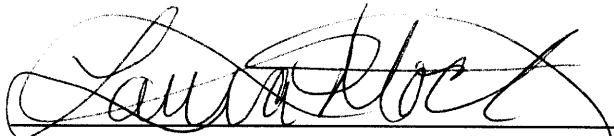
COUNT ELEVEN:

**18 U.S.C. § 1030(a)(2)(C) and (c)(2)(B)(i) -
Unlawfully Obtaining Information from a
Protected Computer for Financial Gain**

COUNT TWELVE:


**18 U.S.C. § 1030(a)(2)(C) and (c)(2)(B)(i) -
Unlawfully Obtaining Information from a
Protected Computer for Financial Gain**

A true bill.


Foreperson

Filed in open court this 20th day of April

A.D. 2011



United States Magistrate Judge

Bail. \$ summons to counsel (if represented)

Initial Appearance April 27, 2011 at 9:30 AM
Clay H. Rojas

MELINDA HAAG (CABN 132612)
United States Attorney

FILED

2011 APR 20 P 3:49

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
N.D. OF CALIF.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,
Plaintiff,
v.
CLAY H. ROJAS,
WILLIAM "BILLY" BETTENCOURT, and
VIVIANA V. RODRIGUEZ,
Defendants.

No. CR 10-00931 LHK

VIOLATIONS: 18 U.S.C. § 1349 –
Conspiracy to Commit Honest Services
Fraud; 18 U.S.C. §§ 1343 and 1346 –
Honest Services Fraud; 18 U.S.C. § 2 –
Aiding and Abetting; 18 U.S.C. § 371 –
Conspiracy; 18 U.S.C. § 1030(a)(2)(C) and
(c)(2)(A) – Unlawfully Obtaining
Information from a Protected Computer; 18
U.S.C. § 1030(a)(2)(C) and (c)(2)(B)(i) –
Unlawfully Obtaining Information from a
Protected Computer for Financial Gain

SUPERSEDING INDICTMENT

The Grand Jury charges:

COUNT ONE: (18 U.S.C. § 1349 – Conspiracy to Commit Honest Services Fraud)

A. INTRODUCTORY ALLEGATIONS

At all times relevant to this Indictment:

1. Clay H. Rojas was an officer of the Santa Clara Police Department. As a sworn peace officer, Rojas owed a duty to provide honest services to the Santa Clara Police Department and to the taxpayers of the City of Santa Clara.

//

SUPERSEDING INDICTMENT

1 2. William "Billy" Bettencourt was affiliated with the Hells Angels Motorcycle
2 Club, in its Santa Cruz chapter. Bettencourt's affiliation changed from prospect to member of
3 the Hells Angels in August 2010. Bettencourt lived and worked in the Northern District of
4 California.

5 3. Viviana V. Rodriguez was a coworker and associate of Bettencourt.

6 B. THE OBJECTS OF THE CONSPIRACY

7 4. Beginning on a date unknown to the Grand Jury, but no later than July 9, 2010,
8 and continuing until October 14, 2010, in the Northern District of California, and elsewhere, the
9 defendants,

10 CLAY H. ROJAS,
11 WILLIAM "BILLY" BETTENCOURT, and
 VIVIANA V. RODRIGUEZ,

12 did knowingly conspire and agree with each other to execute, and to attempt to execute, a
13 material scheme and artifice to defraud the People of the City of Santa Clara, California, and the
14 Santa Clara Police Department of the intangible right to the honest services of Rojas, and, for the
15 purpose of executing such scheme and artifice and attempting to do so, did knowingly transmit,
16 and cause to be transmitted, by wire and radio communications in interstate commerce, certain
17 writings, signs, signals, pictures, to wit, SMS text messages, in violation of Title 18, United
18 States Code, Sections 1343 and 1346.

19 **The Scheme to Defraud**

20 5. The scheme consisted of Rojas providing confidential law enforcement
21 information to Bettencourt in exchange for Bettencourt's forbearance on a debt Rojas owed to
22 him. Rojas provided confidential criminal history and motor vehicle information to Bettencourt
23 in exchange for extensions of time to repay Rojas' debt to Bettencourt. For her part, Rodriguez
24 asked Bettencourt to obtain certain confidential criminal history and motor vehicle information
25 for her, knowing when she did so that the information she was requesting was restricted, that
26 Bettencourt was not entitled to obtain it, and therefore that any effort by him to do so on her
27 behalf would necessarily be by unlawful means.

28 //

SUPERSEDING INDICTMENT

Department of Justice, including (1) California Department of Motor Vehicles (CA DMV), (2) Wanted Person System (WPS), (3) local databases maintained in Santa Clara County, and Alameda County Warrant System (AWS), among others, as well as (4) the National Crime Information Center (NCIC), a database maintained by the FBI as part of the Criminal Justice Information System (CJIS) maintained in Clarksburg, West Virginia. CJIC is a criminal justice database that tracks individuals from arrest to adjudication in the County of Santa Clara. CLETS and CJIC are available to local, State, and federal agencies to query information regarding criminal history records and related criminal justice activities.

8. The defendants communicated, among other ways, through Short Message System (SMS) text messaging. SMS text messaging allows users to send and receive text messages of up to 160 alphanumeric characters on a handset. Those messages are delivered using radio waves transmitted over an interstate cellular network facility.

9. Bettencourt subscribed to cellular telephone service through the AT&T cellular network, which has its SMS servers in the State of Washington. As a result, any SMS text message sent to or from Bettencourt in California would cause a radio communication to be transmitted between the states of California and Washington.

All in violation of Title 18, United States Code, Sections 1349, 1343, and 1346.

COUNTS TWO THROUGH SIX: 18 U.S.C. §§ 1343 and 1346 – Honest Services Fraud, 18 U.S.C. § 2 – Aiding and Abetting

10. The factual allegations set forth in paragraphs one through nine are realleged and incorporated as if fully set forth here.

11. Beginning on a date unknown to the Grand Jury, but no later than July 9, 2010, and continuing until October 14, 2010, in the Northern District of California and elsewhere, the defendants named in each of counts Two through Six below, having devised and intending to devise a material scheme and artifice to defraud the People of the City of Santa Clara, California, and the Santa Clara Police Department of the intangible right to the honest services of Rojas, did, for the purpose of executing said scheme and artifice, knowingly transmit, and cause to be transmitted, by means of wire and radio communications in interstate commerce, the wire and

SUPERSEDING INDICTMENT

radio communications identified below:

COUNT	DATE	DEFENDANTS	WIRE or RADIO COMMUNICATION
Two	7/9/2010	Bettencourt Rojas	Query sent from California using the National Crime Information Center (NCIC) for criminal history information regarding Bettencourt.
Three	8/16/2010	Bettencourt Rojas	SMS text message using AT&T from Bettencourt to Rojas stating, "\$?"
Four	8/19/2010	Bettencourt Rojas	SMS text message using AT&T from Bettencourt to Rojas stating, "I'm done. Can u r my name and check status? Yhank u."
Five	8/20/2010	Bettencourt Rojas	SMS text message using AT&T from Rojas to Bettencourt stating, "2005 chrysler registered to [S.W.] out of Sacramento."
Six	9/3/2010	Bettencourt Rojas	Query sent from California using the National Crime Information Center (NCIC) for criminal history information regarding person identified in this indictment by the initials, C.C.

All in violation of Title 18, United States Code, Sections 1343 and 1346, and
18 U.S.C. § 2.

COUNT SEVEN: (18 U.S.C. § 1030(a)(2)(C) and (c)(2)(A)) – Unlawfully Obtaining
Information from a Protected Computer)

12. The factual allegations contained in paragraphs one through nine are realleged and
incorporated as if fully set forth here.

13. On or about June 18, 2010, in the Northern District of California, the defendant,
CLAY H. ROJAS,
did intentionally exceed authorized access to the CLETS system, a protected computer, in order
to obtain information regarding F.V., in violation of Title 18, United States Code, Sections
1030(a)(2)(C) and (c)(2)(A).

COUNT EIGHT: (18 U.S.C. § 1030(a)(2)(C) and (c)(2)(B)(i)) – Unlawfully Obtaining
Information from a Protected Computer for Financial Gain)

14. The factual allegations contained in paragraphs one through nine are realleged and
incorporated as if fully set forth here.

SUPERSEDING INDICTMENT

15. On or about July 9, 2010, in the Northern District of California, the defendant,

CLAY H. ROJAS,

did intentionally exceed authorized access to the CLETS system, a protected computer, in order to obtain information regarding William "Billy" Bettencourt for purposes of private financial gain, in violation of Title 18, United States Code, Sections 1030(a)(2)(C) and (c)(2)(B)(i).

COUNT NINE: (18 U.S.C. § 1030(a)(2)(C) and (c)(2)(B)(i)) – Unlawfully Obtaining Information from a Protected Computer for Financial Gain)

16. The factual allegations contained in paragraphs one through nine are realleged and incorporated as if fully set forth here.

17. On or about July 9, 2010, in the Northern District of California, the defendant,

CLAY H. ROJAS,

did intentionally exceed authorized access to the CJIC system, a protected computer, in order to obtain information regarding C.C. for purposes of private financial gain, in violation of Title 18, United States Code, Sections 1030(a)(2)(C) and (c)(2)(B)(i).

COUNT TEN: (18 U.S.C. § 1030(a)(2)(C) and (c)(2)(B)(i)) – Unlawfully Obtaining Information from a Protected Computer for Financial Gain)

18. The factual allegations contained in paragraphs one through nine are realleged and incorporated as if fully set forth here.

19. On or about August 20, 2010, in the Northern District of California, the defendant,

CLAY H. ROJAS,

did intentionally exceed authorized access to the CLETS system, a protected computer, in order to obtain information regarding the license plate ****728 for purposes of private financial gain, in violation of Title 18, United States Code, Sections 18 U.S.C. § 1030(a)(2)(C) and (c)(2)(B)(i).

COUNT ELEVEN: (18 U.S.C. § 1030(a)(2)(C) and (c)(2)(B)(i)) – Unlawfully Obtaining Information from a Protected Computer for Financial Gain)

20. The factual allegations contained in paragraphs one through nine are realleged and incorporated as if fully set forth here.

SUPERSEDING INDICTMENT

1 21. On or about September 3, 2010, in the Northern District of California, the
2 defendant,

3 CLAY H. ROJAS,

4 did intentionally exceed authorized access to the CLETS system, a protected computer, in order
5 to obtain information regarding C.C. for purposes of private financial gain, in violation of Title
6 18, United States Code, Sections 18 U.S.C. § 1030(a)(2)(C) and (c)(2)(B)(i).

7 COUNT TWELVE: (18 U.S.C. § 1030(a)(2)(C) and (c)(2)(B)(i)) – Unlawfully Obtaining
8 Information from a Protected Computer for Financial Gain)

9 22. The factual allegations contained in paragraphs one through nine are realleged and
10 incorporated as if fully set forth here.

11 23. On or about September 3, 2010, in the Northern District of California, the
12 defendant,

13 CLAY H. ROJAS,

14 did intentionally exceed authorized access to the CJIC system, a protected computer, in order to
15 obtain information regarding William “Billy” Bettencourt for purposes of private financial gain,
16 in violation of Title 18, United States Code, 18 U.S.C. § 1030(a)(2)(C) and (c)(2)(B)(i).


17
18 DATED:

19 4/20/2011

A TRUE BILL.

20 
FOREPERSON

21
22 MELINDA HAAG
23 United States Attorney

24 
25 JEFFREY D. NEDROW
26 Chief, San Jose Branch

27 (Approved as to form: 
28 AUSA DANIEL R. KALEBA

SUPERSEDING INDICTMENT

AO 257 (Rev. 6/78)

DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT
 BY: ☐ COMPLAINT ☐ INFORMATION ☒ INDICTMENT
☒ SUPERSEDING
OFFENSE CHARGED

SEE ATTACHED SHEET

- ☐
- Petty
-
- ☐
- Minor
-
- ☐
- Misdemeanor
-
- ☒
- Felony

PENALTY: SEE ATTACHED SHEET

 Name of District Court, and/or Judge/Magistrate Location
 NORTHERN DISTRICT OF CALIFORNIA

 SAN JOSE DIVISION
 2011 APR 20 11 31 AM
DEFENDANT - U.S.
 RICHARD W. WIEKING
 CLAY H. BOJAS

 DISTRICT COURT NUMBER
 10-00931 LHK
PROCEEDING

Name of Complainant Agency, or Person (& Title, if any)

FBI S/A David Brown

☐ person is awaiting trial in another Federal or State Court,
 give name of court

☐ this person/proceeding is transferred from another district
 per (circle one) FRCrp 20, 21, or 40. Show District

☐ this is a reprosecution of
 charges previously dismissed
 which were dismissed on motion
 of:
☐ U.S. ATTORNEY ☐ DEFENSE
SHOW
DOCKET NO.
☐ this prosecution relates to a
 pending case involving this same
 defendant
MAGISTRATE
CASE NO.
☐ prior proceedings or appearance(s)
 before U.S. Magistrate regarding this
 defendant were recorded under

 Name and Office of Person
 Furnishing Information on this form MELINDA HAAG

☒ U.S. Attorney ☐ Other U.S. Agency

 Name of Assistant U.S.
 Attorney (if assigned) AUSA Daniel Kaleba
DEFENDANT**IS NOT IN CUSTODY**
 Has not been arrested, pending outcome this proceeding.
 1) ☐ If not detained give date any prior
 summons was served on above charges
2) ☐ Is a Fugitive3) ☒ Is on Bail or Release from (show District)

NDCA

IS IN CUSTODY4) ☐ On this charge5) ☐ On another conviction
☐ Federal ☐ State
6) ☐ Awaiting trial on other charges

If answer to (6) is "Yes", show name of institution

 Has detainer
 been filed? ☐ Yes ☐ No

 If "Yes"
 give date
 filed

**DATE OF
 ARREST**

Month/Day/Year

Or... if Arresting Agency & Warrant were not

**DATE TRANSFERRED
 TO U.S. CUSTODY**

Month/Day/Year

☐ This report amends AO 257 previously submitted
ADDITIONAL INFORMATION OR COMMENTS**PROCESS:**
☒ SUMMONS ☐ NO PROCESS* ☐ WARRANT

Bail Amount: _____

If Summons, complete following:

☒ Arraignment ☒ Initial Appearance

Defendant Address:

 c/o Law Office of Daniel Jensen, P.C.
 4675 Stevens Creek Blvd, Suite 250, Santa Clara, CA 95051-6767

 * Where defendant previously apprehended on complaint, no new summons or
 warrant needed, since Magistrate has scheduled arraignment

Date/Time: 4/27/11 at 9:00a.m. Before Judge: Grewal

Comments:

Penalty Sheet: U.S. vs Rojas, et.al., CR 10- 00931 LHK

Count One: 18 U.S.C. § 1349 - Conspiracy to Commit Honest Services Fraud

20 years imprisonment per count
\$250,000 fine
3 years supervised release
\$100 special assessment

**Counts Two - Six: 18 U.S.C. §§ 1343 and 1346 - Honest Services Fraud,
18 U.S.C. § 2 - Aiding and Abetting**

20 years imprisonment per count
\$250,000 fine
3 years supervised release
\$100 special assessment

**Count Seven: 18 U.S.C. § 1030(a)(2)(C) and (c)(2)(A) - Unlawfully Obtaining
Information from a Protected Computer**

1 year imprisonment
\$100,000 fine
1 year supervised release
\$25 special assessment

**Counts Eight – Twelve - 18 U.S.C. § 1030(a)(2)(C) and (c)(2)(B)(i) -
Unlawfully Obtaining Information from a Protected Computer for Financial
Gain**

5 years imprisonment
\$250,000 fine
3 years supervised release
\$100 special assessment

AO 257 (Rev. 6/78)

DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT
 BY: ☐ COMPLAINT ☐ INFORMATION ☒ INDICTMENT
☒ SUPERSEDING
OFFENSE CHARGED

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- ☐
- Minor
-
- ☐
- Misdemeanor
-
- ☒
- Felony

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 Name of District Court, and/or Judge/Magistrate Location
 NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

APR 20 P 3:50

DEFENDANT - U.S.
 RICHARD W. WIEKING
 CLERK, U.S. DISTRICT COURT
 WILLIAM "BILLY" BETTENCOURT

DISTRICT COURT NUMBER

10-00931 LHK

PROCEEDING

Name of Complainant Agency, or Person (& Title, if any)

FBI S/A David Brown

☐ person is awaiting trial in another Federal or State Court,
 give name of court

☐ this person/proceeding is transferred from another district
 per (circle one) FRCrp 20, 21, or 40. Show District

☐ this is a reprosecution of
 charges previously dismissed
 which were dismissed on motion
 of:

☐ U.S. ATTORNEY ☐ DEFENSE
SHOW
DOCKET NO.
☐ this prosecution relates to a
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MAGISTRATE
CASE NO.
☐ prior proceedings or appearance(s)
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 Name and Office of Person
 Furnishing Information on this form MELINDA HAAG

☒ U.S. Attorney ☐ Other U.S. Agency

 Name of Assistant U.S.
 Attorney (if assigned) AUSA Daniel Kaleba
IS NOT IN CUSTODY

Has not been arrested, pending outcome this proceeding.

- 1)
- ☐
- If not detained give date any prior
-
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-
- 2)
- ☐
- Is a Fugitive
-
- 3)
- ☐
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IS IN CUSTODY

- 4)
- ☐
- On this charge
-
- 5)
- ☐
- On another conviction }
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- ☐
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DATE OF
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Month/Day/Year

Or... if Arresting Agency & Warrant were not

DATE TRANSFERRED
TO U.S. CUSTODY

Month/Day/Year

☐ This report amends AO 257 previously submitted
ADDITIONAL INFORMATION OR COMMENTS**PROCESS:**
☐ SUMMONS ☒ NO PROCESS* ☐ WARRANT

Bail Amount: _____

If Summons, complete following:

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Defendant Address:

 * Where defendant previously apprehended on complaint, no new summons or
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Date/Time: _____ Before Judge: _____

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SAN JOSE DIVISION

DEFENDANT - U.S.

VIVIANA RODRIGUEZ

DISTRICT COURT NUMBER

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☐ this prosecution relates to a
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Name and Office of Person

Furnishing Information on this form MELINDA HAAG

☒ U.S. Attorney ☐ Other U.S. Agency

Name of Assistant U.S.

Attorney (if assigned) AUSA Daniel Kaleba

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